



:: प्रधान आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क ::  
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



सत्यमेव जयते

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan  
रेस कोर्स रिंग रोड / Race Course Ring Road  
राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइल संख्या/  
Appeal / File No.  
V2/41 & 42/BVR/2018-19

मूल आदेश सं /  
O.I.O. No.  
SUPDT/CGST/PBR-2/01/2018  
SUPDT/CGST/PBR-2/02/2018

दिनांक/  
Date:  
14/3/2018

ख अपील आदेश संख्या (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-079-TO-080-2019**

आदेश का दिनांक /  
Date of Order:

15.03.2019

जारी करने की तारीख /  
Date of issue:

19.03.2019

कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,  
राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,  
Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-

Saurashtra Cement Limited, Near Railway Station, P.O. Ranavav-360560, Porbandar (Gujarat).

इस आदेश (अपील) में व्यथित कोई व्यक्ति निम्नलिखित तरीक़ों में उपयुक्त प्राधिकारों / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वार्तिकरण मूल्यों के सम्बन्धित मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं. 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताया गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, व्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग, व्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/


- (i) बिन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
- The appeal under sub section (2) and (2A) of the section 86 of the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेन्ट्रल) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो कि विनीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये में अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
  - सेनवेट जमा की ली गई गलत राशि
  - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान विनीय (नं. 2) अधिनियम 2014 के आरंभ में पूर्व किमी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्थात् अपील को लागू नहीं होगा। /
- For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
- Under Central Excise and Service Tax, "Duty Demanded" shall include :
- amount determined under Section 11 D;
  - amount of erroneous Cenvat Credit taken;
  - amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपत्रनुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /  
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- यदि माल के किमी नुकसान के मामले में, जहां नुकसान किमी माल को किमी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किमी एक भंडार गृह में दूसरे भंडार गृह पारगमन के दौरान, या किमी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किमी कारखाने या किमी भंडार गृह में माल के नुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
  - भारत के बाहर किमी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त बड़े माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किमी राष्ट्र या क्षेत्र को निर्यात की गयी है। /  
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
  - यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
  - मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा ममायाविधि पर या बाद में पारित किए गए हैं। /  
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
  - उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो कि केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के मंथन के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /  
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
  - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथामंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थान आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /  
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। /  
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in).

**:: ORDER IN APPEAL ::**

M/s. Saurashtra Cement Limited, Near Railway Station, Ranavav, District: Porbandar, Pin – 360 560 (hereinafter referred to as "the appellant") has filed present Appeal No. V2/41/BVR/2018-19 and Appeal No. V2/42/BVR/2018-19 against Order-in-Original No. SUPDT/CGST/PBR-2/01/2018 and Order-in-Original No. SUPDT/ CGST/PBR-2/02/ 2018 both dated 14.03.2018 (hereinafter referred to as "the impugned orders") passed by the Superintendent, Central Goods and Service Tax Range – 2, Porbandar (hereinafter referred to as "the lower adjudicating authority").

2. The brief facts of the case are that during the test check of central excise records by the Range Officers, it was found that the appellant availed cenvat credit of service tax on Installation & Maintenance of Air Conditioners installed at their office premises and service tax paid on Tours & Travels. The availment of cenvat credit in respect of the said services alleged to be not in accordance with the provisions of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR"). Show Cause Notice No. CEX/AR-II/PBR/SCL/FAR-379/2015-16 dated 11.04.2017 for the period from February, 2015 to March, 2016 and Show Cause Notice No. CEX/AR-II/PBR/SCL/FAR-379/2015-16 dated 22.12.2017 for the period from April, 2016 to June, 2017 were issued demanding recovery of wrongly availed cenvat credit aggregating to Rs. 1,17,442/- and Rs. 7,22,944/- respectively alongwith interest under Rule 14 of the CCR read with Section 11A/Section 11AA of the Central Excise Act, 1944 and for imposition of penalty under Rule 15(1) of the CCR. The proposals under both SCNs for recovery of cenvat credit of service tax on Installation & Maintenance of Air Conditioners installed at their office premises and cenvat credit of service tax paid on Tours & Travels bills were confirmed along with interest under Rule 14 of the CCR read with Section 11A/Section 11AA by the lower adjudicating authority vide impugned orders and imposed penalty Rs. 11,280/- and Rs. 72,294/- respectively under Rule 15(1) of the CCR and also appropriated Rs. 4,582/- paid by the appellant against the confirmed demand in case of OIO No. SUPDT/CGST/PBR-2/01/2018 dated 14.03.2018.

3. Being aggrieved with the impugned orders, the appellant preferred the present two appeals wherein they challenged the denial of cenvat credit of service tax paid by them on Tour & Travels Bills on the grounds that the said input service is in connection with sending the dealers as a part of sales promotion; that this helps in enhancing the sales volume for future and is in effect a sales promotion expense; that these measures act as an incentive to



dealers to strive for promotion of the sales of the company's products; that it could be seen that services relating to sales promotion is specifically mentioned in the inclusive clause of definition of 'input service' under Rule 2(l) of Cenvat Credit Rules, 2004; that there is no limitations regarding the ways and means of sales promotion; that when companies print calendars, greeting cards etc. and organizing award functions for students, with an aim for getting some innovative idea from the students in connection with marketing are also considered as sales promotion as held in case of Ultra Tech Cements reported as 2015 (40) STR 523 (Tri.-Del.).

3.1 The appellant has not contested the issue related to wrong availment of cenvat credit of Rs. 4,582/- on input service of installation and maintenance of air conditioners with reference to Appeal No. V2/41/BVR/2018-19 and reversed cenvat credit of Rs. 4,582/- and paid interest of Rs. 1,002/- on the input service of installation and maintenance of air conditioners.

3.2 However, the appellant has contested the issue related to wrong availment of cenvat credit on input service of installation and maintenance of air conditioners with reference to Appeal No. V2/42/BVR/2018-19 and they challenged the denial of cenvat credit of service tax on Installation and Maintenance of Air Conditioners on the ground that the said input service is relating to central air conditioning required for cooling of machinery and equipments, electric server room, computer room, control room etc. and factory office of the appellant and also corporate office at Mumbai where all management functions relating to factory takes place and not relating to branch offices; that in a factory office, planning department and other department directly related to the manufacturing functions and hence, such input service has direct nexus to manufacture and hence, they are eligible for cenvat credit; that even though the claim of credit on this service within the legal provisions, as a matter of extreme caution and with a view to comply with true spirit of law, appellant reversed Rs. 51,602/- and paid interest of Rs. 9,921/- vide Challan No. 00137 dated 05.04.2018 with regard to air conditioners maintenance and installation service pertaining to their Mumbai corporate office; that the balance amount of Rs. 78,053/- is in relation to air conditioners maintenance and installation at the factory and the factory office, which is eligible credit and the same is liable to be allowed.

4. Personal hearing was granted to the appellant as well as department on 12.12.2018, 26.12.2018, 09.01.2019, 05.02.2019 and 19.02.2019 vide PH notices dated 30.11.2018, 13.12.2018, 28.12.2018, 10.01.2019 and 04.02.2019 respectively, however, no one appeared on the given dates and hence, I proceed

to decide these appeals on the basis of available records.

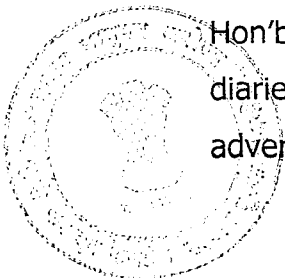
4.1 The appellant has paid Rs. 8,465/- vide SBI Challan No. 00133 dated 24.04.2018 and Rs. 54,221/- vide SBI Challan No. 00134 dated 24.04.2018 as submitted by them in their Appeal Memo and has also reversed cenvat credit of Rs. 4,582/- and Rs. 51,602/- along with payment of interest of Rs. 1,002/- and Rs. 9,921/- and hence, they have complied with provisions of Section 35F of the Act.

**Findings:**

5. I have carefully gone through the facts of the case, impugned orders, grounds of these two appeals and other related records of the case. The limited issue to be decided in the present appeals is that whether the impugned orders disallowing cenvat credit of service tax paid on Tours & Travels Bills of their dealers and Installation & Maintenance of Air Conditioners at their corporate office, branch office and their factory as "input service" is correct, legal and proper or otherwise.

6. I find that the appellant has challenged the denial of cenvat credit of service tax paid on tours & travels bills and vehemently argued that sending the dealers on tour is a part of their sales promotion scheme as it helps in enhancing the sales volume in future; that the services relating to sales promotion is specifically mentioned in the inclusive clause of definition of 'input service' under Rule 2(i) of Cenvat Credit Rules, 2004. I find that the appellant has contended sales promotion by allowing dealers to travel/tour without any documentary evidence showing that the tour was arranged by them under their sales promotion scheme. It is evident from the facts available in record that the tours were organized for personal enjoyment of the dealers in the form of incentive for attaining some pre-fixed sales volume and therefore, such travel cannot be considered as "input service". The appellant, instead of adducing concrete tangible evidences, submitted copy of letters of the dealers. I find that the said letters are not sufficient to substantiate admissibility of cenvat credit under the category of sales promotion. The appellant has also not established that the expenditure incurred by them towards aforesaid services actually formed part of cost of their final product.

6.1 The appellant relied upon case law of the Hon'ble CESTAT in case of Ultratech Cement Ltd. reported as 2015 (40) STR 523 (Tri.-Del.) wherein the Hon'ble CESTAT allowed cenvat credit on printing of calendar, greeting cards, diaries, etc., and organizing award functions which used these services for advertisement purposes of their products whereas the present case relates to

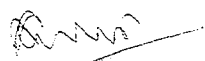


tour and travel of dealers and not any meeting of the appellant planned/held for business purpose. The decisions relied upon by the appellant are on different footings and therefore, not applicable to the facts and circumstances of the present case. I am of the considered view that the appellant is not entitled for cenvat credit of service tax paid on tours & travels of the dealers of the appellant as the same is not 'input service' within the meaning of amended definition of input service provided under Rule 2(I) of the CCR. Since the credit is held inadmissible, the appellant is required to pay interest and imposition of penalty is proper to this extent.

7. For cenvat credit on Installation and Maintenance services of Air Conditioners at their office premises, I find that the appellant reversed cenvat credit of Rs. 4,582/- and paid interest of Rs. 1,002/- on input service of installation and maintenance of air conditioners and not contested the matter during the proceedings of Appeal No. V2/41/BVR/2018-19 as it is a fact that the said service for offices does not qualify to be an input service in terms of amended definition under Rule 2(I) of the CCR as the same is neither used directly or indirectly in relation to the manufacture of the final products upto the place of removal nor fall within inclusive part of the definition. I find that the issue of inadmissibility of cenvat credit on the said service is admitted by the appellant and they correctly reversed the same along with interest. Accordingly, I uphold the impugned order No. SUPDT/CGST/PBR-2/01/2018 dated 14.03.2018 to this extent.

7.1 The appellant has also reversed cenvat credit of Rs. 51,602/- and paid interest of Rs. 9,921/- vide Challan No. 00137 dated 05.04.2018 with reference to Appeal No. V2/42/BVR/2018-19, which had been taken by them for their Corporate/Head Office, accepting that the air conditioners of their Corporate/Head Office are not related to the manufacture of their final products. It is a fact that the said service for their Corporate Office does not qualify to be an input service in terms of amended definition under Rule 2(I) of the CCR as the same is neither used directly or indirectly in relation to the manufacture of the final products upto the place of removal nor fall within inclusive part of the definition. I find that the issue of inadmissibility of cenvat credit on the said service is admitted by the appellant and they correctly reversed the same along with interest.

7.2 For cenvat credit of Rs. 78,053/- on Installation and Maintenance of Air Conditioners with reference to Appeal No. V2/42/BVR/2018-19, the appellant has contested/challenged the denial of cenvat credit of Rs. 78,053/- of service tax paid on the ground that the said input service is relating to central air



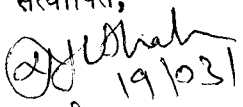
conditioning required for cooling of machineries and equipments, electric server room, computer room, control room etc. and I agree to their contention as these have direct nexus to manufacture of their final products and hence, the appellant is required to be allowed to take cenvat credit of Rs. 78,053/-. Since, cenvat credit of Rs. 78,053/- is allowed to the appellant, they are not required to pay interest on this amount and no penalty is imposable on them in this regard.


7.3 I find that the appellant has wrongly availed cenvat credit of Rs. 7,06,149/- on the services of tours & travels of their dealers on pleasure trips and cenvat credit of Rs. 56,184/- (Rs. 51,602/- + Rs. 4,582/-) on Installation and Maintenance service of Air Conditioners at their office premises including Corporate Office and hence, Rs. 7,62,333/- is required to be recovered from the appellant along with applicable interest. It is a fact that they had declared all these in their returns and hence, penalty is imposable @10% of irregular credit taken as per amended Section 11AC of the Act. Hence, penalty is reduced to Rs. 76,233/- to be paid by them forthwith.

8. In view of the above, I modify the impugned orders as above reducing demand to Rs. 7,62,333/- (Rs. 7,06,149/- + Rs. 56,184/-) along with appropriate rate of interest and penalty to Rs. 76,233/- (Rs. 70,615/- + 5,618/-) from Rs. 83,574/- (Rs. 72,294/- and Rs. 11,280/-) and allow appeals to this extent.

९. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeals filed by the appellant stand disposed off in above terms.

सत्यापित,  
  
 19/03/2019  
 आर. पी. शाह  
 अधीक्षक (अपील्स)

  
 (कुमार संतोष) 15/3/2019  
 प्रधान आयुक्त (अपील्स)

By RPAD  
 To,

M/s. Saurashtra Cement Limited,  
 Near Railway Station,  
 Ranavav, Distt. Porbandar, Pin Code  
 - 360 560.

मेसर्स सौराष्ट्र सीमेंट ली.,  
 रेल्वे स्टेशन के पास, रानावाव, जिल्ला - पोरबंदर,  
 पिन कोड - ३६० ५६०.

Copy to:

- (1) The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information please.
- (2) The Commissioner, CGST & Central Excise, Bhavnagar Commissionerate, Bhavnagar for necessary action.
- (3) The Assistant Commissioner, CGST & Central Excise Division, Junagadh for necessary action.
- ✓ (4) Guard File.
- (5) F. No. V2/42/BVR/2018-19.

